

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MARTÍN JONATHAN BATALLA
VIDAL, *et al.*,

Plaintiffs,

v.

CHAD F. WOLF, *et al.*,

Defendants.

No. 16-cv-4756 (NGG) (JO)

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, *et al.*,

Defendants.

No. 17-cv-5228 (NGG) (JO)

NOTICE

Defendants respectfully notify the Court and the Plaintiffs that, yesterday afternoon, after Defendants had filed their summary-judgment reply brief, “out of an abundance of caution,” Acting Secretary of Homeland Security Chad F. Wolf ratified “certain delegable actions taken by Acting Secretary McAleenan” and “one delegable action taken by U.S. Citizenship and Immigration Services (USCIS) Deputy Director for Policy [Joseph] Edlow,” including the memorandum titled “Implementing Acting Secretary Chad Wolf’s July 28, 2020 Memorandum,” which was issued by Deputy Director Edlow on August 21, 2020 (“Edlow Memorandum”). The Edlow Memorandum—which provides instructions to USCIS personnel about how to implement the Wolf Memorandum—was attached to the *Batalla Vidal* Plaintiffs’ complaint. *Batalla Vidal* ECF No. 309-4 (Attachment 5). Yesterday’s ratification is attached to this Notice as Exhibit 1.

The *State of New York* Plaintiffs have not separately challenged the Edlow Memorandum, so this additional ratification will have no bearing on the *State of New York* matter.

The *Batalla Vidal* Plaintiffs did purport to bring a separate challenge to the Edlow Memorandum in their Fourth Amended Complaint, *Batalla Vidal* ECF No. 308, ¶¶ 170-175, but did not meaningfully address that challenge in their partial-summary-judgment briefing. Presumably, that is because for purposes of the ongoing partial-summary-judgment briefing, to the extent the *Batalla Vidal* Plaintiffs separately challenge the Edlow Memorandum at all, that challenge would necessarily rise or fall with their challenge to the Wolf Memorandum on the theory that Acting Secretary Wolf was not lawfully appointed. *See Batalla Vidal* Fourth Amended Complaint ¶¶ 172, 175 (“Because he was not lawfully serving as Acting Secretary, Defendant Wolf lacked any legal authority to designate Defendant Edlow to the position of USCIS Deputy Director for Policy. . . . Despite being unlawfully designated by an individual lacking legal authority to serve Acting DHS Secretary, Defendant Edlow issued the Edlow Memorandum on August 21, 2020, attempting to implement the Wolf Memorandum.”). The parties have already briefed those arguments at length, so Defendants will not reiterate them here. Instead, Defendants incorporate their briefing by reference, in support of the additional argument that, to the extent there was any separate appointment-related defect with the Edlow Memorandum, it has now also been cured on the merits, for largely the same reasons that apply to the prior ratification of the Wolf Memorandum.¹ *See* Defs.’ Summary-Judgment Reply, *Batalla Vidal* ECF No. 335, at 15-21. In any case, nothing in this case turns on the legality of the Edlow Memorandum standing alone, as the Edlow Memorandum simply provides internal instructions for implementation of the Wolf Memorandum.

¹ There may very well be additional arguments as to why, for example, the ratification bar in 5 U.S.C. § 3348(d) does not apply to the ratification of the Edlow Memorandum, and Defendants reserve their right to advance any such arguments at a later date if necessary, including in separate litigation. But the Court need not address any such arguments here, for the reasons stated above.

Dated: October 8, 2020

Respectfully submitted,

JOHN V. COGHLAN
Deputy Assistant Attorney General

SETH D. DuCHARME
Acting United States Attorney

BRAD P. ROSENBERG
Assistant Branch Director

/s/ Stephen M. Pezzi
GALEN N. THORP
Senior Trial Counsel
STEPHEN M. PEZZI
RACHAEL L. WESTMORELAND
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Phone: (202) 305-8576
Fax: (202) 616-8470
Email: stephen.pezzi@usdoj.gov

JOSEPH A. MARUTOLLO
Assistant U.S. Attorney
United States Attorney's Office
Eastern District of New York
271-A Cadman Plaza East, 7th Floor
Brooklyn, NY 11201
Phone: (718) 254-6288
Fax: (718) 254-7489
Email: joseph.marutollo@usdoj.gov

Attorneys for Defendants